INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statutes and executive order involved	2
Statement	6
Argument	10
Conclusion	14

CITATIONS

Cases:	
Baker v. *United States*, 27 F. 2d 863, certiorari denied, 278 U. S. 656	6, 12
Utah Power & Light Co. v. *United States*, 243 U. S. 389	13
Statutes:	
Act of March 2, 1917, 39 Stat. 951, 48 U. S. C. 748 (Organic Act for Puerto Rico)	2, 6
Act of July 12, 1921, c. 44, 42 Stat. 122, 139–140 (Naval Service Appropriation Act)	3, 6
Act of March 27, 1942, 46 Stat. 177, 50 U. S. C. App., Supp. IV, 632 (Second War Powers Act)	8
48 U. S. C. 771	11
Miscellaneous:	
Presidential Proclamation of August 26, 1929, 46 Stat. 3004	3, 6

699780—46

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 143

SAN GERONIMO DEVELOPMENT CO., INC., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The trial court's opinion of January 18, 1943, denying the United States the right to occupy the land temporarily without charge (R. 158–161) is not reported. The opinion of the circuit court of appeals (R. 365–383) is reported in 154 F. 2d 78.

JURISDICTION

The judgment of the circuit court of appeals was entered on March 4, 1946 (R. 384). The petition for a writ of certiorari was filed on June 4, 1946. The jurisdiction of this Court is invoked

under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

In 1921, pursuant to Act of Congress, federal property was leased for 999 years providing that in time of war or national emergency, if necessary, the Navy Department shall have without cost free and unlimited use of the land leased. This land was included in a larger area which, by Presidential Proclamation in 1929, was transferred to the People of Puerto Rico under authority of the Organic Act for Puerto Rico of 1917 which empowered the President to transfer property "no longer needed for purposes of the United States." The questions presented by these facts are:

1. Whether the Presidential Proclamation of 1929 should be construed as releasing the reserved right to use the property in time of war.

2. Whether the President was authorized to release such right.

3. Whether the United States is estopped to deny that such right was released.

STATUTES AND EXECUTIVE ORDER INVOLVED

The material portion of the Organic Act for Puerto Rico of March 2, 1917, 39 Stat. 951, 48 U. S. C. 748, provides:

> SEC. 7. * * * the President may from time to time, in his discretion, convey

to the people of Puerto Rico such lands, buildings, or interests in lands or other property now owned by the United States and within the territorial limits of Puerto Rico as in his opinion are no longer needed for purposes of the United States.

* * * * *

The Naval Service Appropriation Act of July 12, 1921, 42 Stat. 122, 139–140, provides:

SEC. 5. That as consideration for a suitable site and requisite rights, privileges, and easements for a receiving and distant-control radio station in Porto Rico the Secretary of the Navy be, and he hereby is, authorized to exchange or lease for such period as he may deem proper any land under naval control in Porto Rico not otherwise required for naval purposes: *Provided,* That in time of war or national emergency, if necessary, the Navy Department shall have without cost free and unlimited use of any land so exchanged or leased.

* * * * *

The Presidential Proclamation of August 26, 1929, 46 Stat. 3004, provides:

Whereas, by Act of Congress approved March 2, 1917 (39 Stat. 951), entitled "An Act to provide a civil government for Porto Rico and for other purposes" it is provided, "That the President may from time to time, in his discretion, convey to the People of Porto Rico such lands, buildings,

or interests in lands or other property now owned by the United States and within the territorial limits of Porto Rico, as in his opinion are no longer needed for purposes of the United States";

And whereas, the President, by an Executive Order of June 30, 1903, reserved for military purposes certain lands designated as the Military Reservation of San Juan, and said Military Reservation included the tract known as San Geronimo hereinafter described.

And whereas, the said tract, known as San Geronimo, and hereinafter more particularly described (excepting approximately five acres thereof), is no longer needed for the purposes of the United States but is required for public use by the People of Porto Rico,

Now, therefore, in pursuance of the authority vested in me by the Act of March 2, 1917, aforesaid, all the right, title, and interest of the United States in and to the following described tract of land is hereby transferred and conveyed to the People of Porto Rico, viz:

Beginning at a point No. 84 on the Military Road, as shown on the Military Chart of the Military Reservation of San Juan, Porto Rico, and extending in a straight line N. 23°29′ E., through point No. 83 to the sea; thence easterly along the shore line and outside of Fort San Geronimo to the Laguna; thence southerly and outside of the shore line of Fort San Geronimo, and

westerly and southerly along the shore line of the Laguna to San Antonio Battery; thence along San Antonio Channel to a point where the line through points No. 83 and No. 84 intersects the channel; thence along the line N. 23°29′ E. to point No. 84, together with all the right, title, and interest of the United States in all shore and submerged lands lying shoreward of a line drawn through points Nos. 90, 91, 92 and 93, as shown on the military chart of the Military Reservation of San Juan, Porto Rico;

excepting and reserving, however, from the above described tract hereby conveyed, five (5) acres, more or less, heretofore assigned to the uses of the Navy Department for the development of the naval communication service and for other purposes of the United States, southerly of and contiguous to the tract heretofore leased to Virgil Baker, and bounded on the north by the southerly line of the said Virgil Baker tract, being a straight line drawn from the point known as Point 85 at the southwesterly corner of the Virgil Baker tract, easterly along the southerly line of said Virgil Baker tract through Point 86 to the Laguna; on the west by a straight line drawn southerly from said Point 85 along the westerly line of the tract hereby conveyed; on the east by the shore line of the Laguna; and on the south by the northerly line of a proposed road the course and location of which road are to be fixed here-

after. The United States retains title to and jurisdiction over the said last mentioned five acre tract.

STATEMENT

Prior to 1921 the United States owned certain lands in Puerto Rico under control of the Navy Department, which had temporarily leased them to Virgil Baker. By Act of July 12, 1921, 42 Stat. 139–140, Congress authorized the Secretary of the Navy to exchange or lease the lands "Provided, That in time of war or national emergency, if necessary, the Navy Department shall have without cost free and unlimited use of any land so exchanged or leased." Pursuant to this authorization, the land was leased to Baker on July 15, 1921, for 999 years, reserving the right of entry to the Navy Department (R. 55–63). Subsequently, the United States brought suit to cancel the lease because of fraud. On July 30, 1928, a decree canceling the lease was reversed with directions to dismiss the bill of complaint. *Baker* v. *United States,* 27 F. 2d 863 (C. C. A. 1), certiorari denied, 278 U. S. 656.

The following year a proclamation was issued by the President, conveying to the people of Puerto Rico "all the right, title and interest of the United States" in various lands including the leased area, 46 Stat. 3004 (R. 103–105). This proclamation was issued under authority of the Organic Act for Puerto Rico of March 2, 1917 (39 Stat. 951, 48 U. S. C. 748), which empowers the

President to convey to Puerto Rico property no longer needed for purposes of the United States. The order did not mention the reserved right in the lease and only mentioned the leased area in describing the boundaries of a five-acre area excluded from the conveyance. Baker and his wife assigned to the San Geronimo Development Company, all of the stock of which was owned by them, their interest in the leased premises (R. 159). Since that time subleases have been made to various persons or corporations and improvements have been erected on some parts of the property (R. 159, 35–40, 65–101).

Late in 1941 the Navy Department desired to exercise the right of entry and to use the property for war purposes. The Navy Department demanded possession pursuant to the right of entry. However, some of the parties in possession resisted the demand and one of them attempted to obtain an injunction against the taking of possession. (R. 106–134.) This suit was dismissed (R. 46–47).

The present proceeding was instituted on June 16, 1942, in order to settle the controversy and in order to condemn temporary occupancy if the Navy Department did not have the right to possession (R. 2–4). The original petition related to only one parcel of property (R. 2–3). On July 31, 1942, an amended petition was filed so as to include other properties within the Baker lease (R. 5–13). Subsequently, the petition was again

amended so as to include land of the Development Company (R. 161–178, 192–194). The petition relied upon the Second War Powers Act of March 27, 1942 (56 Stat. 177, 50 U. S. C. App., Supp. IV, 632), and other condemnation statutes but without prejudice to the Government's claim that it had the right to use the property without compensation pursuant to the 1921 Act and the lease (R. 9–10). On July 31, 1942, the court entered its order authorizing the United States to take possession on August 1 (R. 13).

Various preliminary motions were denied and some of the defendants answered the complaint (R. 13–32). On December 28, 1942, trial was held relating to the right of the Navy Department to use the land without charge (R. 32–54) and on January 18, 1943, the court rejected the Government's contention. The opinion of the court concluded that the reservation of the right to occupy the land created a covenant running with the land, that the right passed under the Proclamation of 1929, and that it was unnecessary to decide what interest Puerto Rico has in the land (R. 158–161). The Government excepted to the court's rulings and the court ordered the case set down for trial as to compensation (R. 166).

Some of the parcels had been improved, the most important structure being the San Geronimo Hotel. Settlements were agreed upon with the lessees of improved properties and, on May 26, 1944, stipulations to make these settlements effec-

tive were filed in court (R. 332). In each stipulation an annual rental was agreed upon as compensation for the temporary occupancy of the improvements (R. 223–224). In return, the condemnees waived any claim for compensation for occupancy of the lands. No agreement was reached with Gabriel de la Haba, Jose Mera and the San Geronimo Development Company. The properties of de la Haba and Mera had been improved by streets and utility connections but no buildings had been erected upon them. The company's property had not been improved except for one concrete building. On May 26, 1944, trial was had before the court without a jury, relating to the amount of compensation payable to de la Haba and Mera (R. 195–217). On June 19, 1944, a similar trial was held as to the company's claims (R. 228–288). Moreover, the company not having participated at the trial in 1942, some evidence was introduced relating to the right of the Navy Department to use the lands without charge (R. 252–257).

On September 23, 1944, the court rendered an opinion in the form of an order in which it awarded compensation of $365 per annum to de la Haba, $317 per annum to Mera and $10,920 per annum to the Company (R. 303–305). Decision and judgment were entered in accordance with these conclusions on October 2, 1944 (R. 305–307). This judgment was amended in particulars not material here on December 13, 1944 (R. 308–315).

On December 28, 1944, the United States filed notice of appeal from the judgment (R. 316) and on January 2, 1945, the San Geronimo Development Company appealed as to the amount of compensation awarded (R. 316–317).

In an opinion of March 4, 1946, the circuit court of appeals concluded that the Navy Department did have the right to use the land for war purposes without paying compensation.[1] The judgments below were accordingly reversed and the company's appeal was dismissed.

ARGUMENT

Petitioner seeks review solely of the question whether the Navy Department was entitled to use the land without cost during the war emergency as provided in the 1921 Act and the lease to Virgil Baker. As the court below stated (R. 366), this question "is a special and non-recurring one as to which there are no precedents to indicate the answer." Moreover, the decision below is clearly correct.

Petitioner apparently takes the view that the reserved right of wartime use was transferred to Puerto Rico by the Presidential Proclamation of 1929 (cf. Pet. 12). But since Puerto Rico has no navy and does not independently wage war, such right could not be so transferred and, as the

[1] The opinion deals with several other questions which are not now important such as the appropriateness of the procedure used to raise the question.

court below stated (R. 377), it was "personal" to the United States.[2] Thus, petitioner is, in fact, contending that the effect of the Presidential Proclamation was to release the reserved right. Plainly, the proclamation did not have any such effect.

1. The proclamation does not purport to release the right of wartime use. In fact, it does not even refer to the reserved right and the lease is mentioned only in boundary descriptions. The proclamation included not only the lands leased to Baker but a much larger area which had been a military reservation. Since it had been concluded that the larger area was no longer needed for federal purposes, it is quite reasonable, for reasons of civil and criminal jurisdiction, to transfer to Puerto Rico the fee title which remained in the Government after the 999 year lease. Thus, the proclamation is adequately effective when construed to transfer only the fee

[2] For this reason, the United States urged that if an attempt should be made to fit this right into traditional categories of property law, the closest analogy would be an easement in gross. Moreover, there was attached to the Government's brief in the court below a letter of the Governor of Puerto Rico dated December 15, 1941, in which the Governor authorized the use of the land without cost by the Navy Department. The Government urged that this official act was the proper subject of judicial notice and that, if it should be concluded that the reserved right had been transferred to Puerto Rico, the letter would show that it had been exercised on behalf of the Navy Department. Petitioner's argument (Pet. 14–15) that the Governor lacked authority to exercise such right is, we believe, without merit. See 48 U. S. C. 771.

title and as not affecting the reserved right of use. There is nothing in the proclamation to indicate an intention to release such right and thus confer a windfall on Baker and his sublessees (cf. R. 379–380).

2. The President lacked power to release the reserved right. When Congress in 1921 authorized the exchange or lease of these lands it specifically required that the right of free use in wartime be reserved. And this reserved right was the most important consideration flowing to the Government from the lease transaction. See *Baker* v. *United States,* 27 F. 2d 863, 871 (C. C. A. 1). Congress having made specific provision for disposition of this specific parcel[3] it thereby superseded the general provisions of the Organic Act. Consequently, no question is here presented as to amendment of the Organic Act by a general statute which does not mention the territory (cf. Pet. 13). The Organic Act cannot be construed to authorize the President to release the reserved right since "Authority to make a public grant of land to the insular government can hardly embrace authority to offer a private gratuity to the Baker interests" (R. 379). The Secretary of the Navy is not, as petitioner asserts (Pet. 14–15), attempting to reverse the act of the President. On the contrary, under petitioner's construction, the

[3] The legislative history of the 1921 Act shows that it was directed to this particular land. See *Baker* v. *United States,* 27 F. 2d at pp. 866–868.

President in 1929 overruled the Congressional determination of 1921. In 1921 it had been determined that the Baker tract was no longer needed for Government purposes except for the reserved right (cf. R. 60). Hence, as to the Baker tract, the determination as to the extent to which the land was needed for Government uses had been made long before the proclamation of 1929 was issued. This clearly appears from the fact that the 1921 Act authorized either a deed or lease. Thus Congress made complete provision for its disposition and the President had no authority to alter that provision.

3. Petitioner's estoppel argument (Pet. 15–16) is based on the erroneous assumption that the Presidential Proclamation intended to transfer the reserved right and that the President had authority to do so. But estoppel cannot operate to validate an unauthorized act of a government officer. *Utah Power & Light Co.* v. *United States,* 243 U. S. 389, 409. Moreover, improvements were not made on petitioner's property in reliance upon the proclamation.[4] The United States set-

[4] The lease to Virgil Baker containing the reserved right was recorded and, as the district court stated (R. 159), the various assignments and subleases referred thereto (R. 65–100), specific reference being made to the reserved right (R. 68, 72). On the other hand, no reference is made to the proclamation which does not appear to have been recorded. Thus, there is no evidence to support petitioner's assertion (Pet. 3) that it and other sublessees relied upon the proclamation in subleasing.

tled with all the owners of improved properties since it was believed that different questions were presented as to them. But petitioner's property had never been improved except for one concrete building which Baker had in the lease agreed to erect (R. 62, 264). Thus, there is a complete absence of any evidence that in reliance upon a representation in the proclamation petitioner took action to its detriment. There is not, therefore, any basis for the estoppel claim.

CONCLUSION

The decision of the court below is correct, and there is no conflict of decision. The issue presented is unique and not likely to arise again, and no question of public importance is involved. It is respectfully submitted that the petition should be denied.

J. HOWARD MCGRATH,
Solicitor General.
DAVID L. BAZELON,
Assistant Attorney General.
ROGER P. MARQUIS,
Attorney.

JUNE 1946.

U. S. GOVERNMENT PRINTING OFFICE: 1946